SUPREME COURT OF THE UNITED STATES.

No. 342.

MARY BRIEN ET AL., PLAINTIFFS IN ERROR,

vs.

WILLIAM Q. FORCE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the justices of the supreme court of the D. C., greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Mary Brien, Matilda Masi, and Mary Brien, Serephine Masi, and William Wall, trustees, plaintiffs, and William Q. Force, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the U. S., together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme
2 Court, to be then there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and customs of the U. S. should be done.

Witness the Hon. S. P. Chase, Chief Justice of said Supreme Court.

Issued this 1st day of August, 1865.

R. J. MEIGS, *Clk.*

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The U. S. of America to William Q. Force, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the U. S., to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the D. C., wherein Mary Brien, Matilda Masi, and Mary Brien, Serephine Masi, William Wall,
3 trustees, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. David R. Cartter, chief justice of the supreme court of the D. C., the first day of August, 1865.

Service acknowledged.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the supreme court of the D. C., begun and held in and for the District aforesaid, at the city of Washington, on the first Tuesday of February, 1865.

Present: Hon. D. K. Cartter, chief justice; Ward H. Lamon, marshal, and R. J. Meigs, cl'k.

In the records of the proceedings of the said court, among others, are the following to wit:

4 MARY BRIEN, MATILDA MASI, MARY BRIEN, Serephine Masi, and William Wall, trustees, pl't'ffs,
vs.
WILLIAM Q. FORCE, WILLIAM V. H. BROWN, and Isaac Clarke, def'ts.

Be it remembered that said plaintiffs, by W. D. Davidge and S. L. Phillips, sued out the following capias ad respondendum, in the words and tenor following, to wit:

Capias ad respondendum.

DISTRICT OF COLUMBIA, *to wit:*

The U. S. of America to the marshal of the D. C., greeting:

We command you that you take William Q. Force, William V. H. Brown, and , if they shall be found within the county of Washington in your said District, and them safely keep, so that you
5 have their bodies before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the ———, to answer unto Mary Brien, Matilda Masi, si, and Mary Brien, Serephine Masi, and William Wall, trustees, in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness Hon. James Dunlop, esq., chief judge of our said court, at the city of Washington, on the ——, A. D. 18—.

JNO. A. SMITH, *Cl'k.*

DAVIDGE & PHILLIPS.

Marshal's return, and appearance of def'ts.

At which mentioned day, the same being the day of the return of the foregoing writ, comes into the court here the said plaintiffs, by their attorneys aforesaid, and the marshal of the D. C. aforesaid, to whom the foregoing writ was in form aforesaid directed, makes
6 return thereof to the court here thus indorsed, to wit:

"Cepi. W. SELDEN, *Marshal.*"

And the said defendants being called, appear in court here by Joseph H. Bradley, esq., their attorney, and thereupon on rule of the said court the plaintiffs declared, by their said attorneys, against said defendants in form following, to wit: (the said attorney for the said defendants having first suggested the death of said defendant, Isaac Clarke.)

7 WASHINGTON COUNTY, *District of Columbia, to wit:*

William Q. Force and William V. H. Brown, late of the county aforesaid, are attached to answer unto Mary Brien, Matilda Masi, and Mary Brien, Seraphina Masi, Wm. Wall, trustees, in a plea of trespass as the case, &c.

And therefore said plaintiffs complain, by W. E. Davidge and S. L. Phillips their attorneys: For that whereas before and at the time of the committing of the grievances by the said defendant, as hereinafter mentioned, a certain messuage and premises, with the appurtenances, situated in the county aforesaid, was in the possession and occupation of two certain persons, to wit, Eustace W. Barron and William E. Barron, as tenants there of the said plaintiffs, (the reversion thereof then and still belonging to the said plaintiffs,) to wit, at the county aforesaid; and whereas, also, the said plaintiffs before and at the time of the committing of the grievances hereinafter and mentioned, were the owner and proprietor of divers goods and chattels, to wit: 1 bath oil-cloth on floor, 12 wooden chairs, 1 wooden table, 9 prints framed, 1 small looking-glass, 1 marble basin, 14 prints framed, 1 map and set colored charts, 4 chairs, 2 stools,
1 small table, 1 carpet, 5 chairs, 2 stools, 1 table with cover,
8 1 piece of straw matting, 2 light brackets, 16 prints framed,
2 alabaster vases, 1 inkstand, 1 papier maché writing-stand, 2 large plaster figures, 1 centre-piece, shelves fixed to wall with glass doors, 2 bedsteads and bedding, 6 chairs, and other personal property of great value, to wit, of the value of one thousand dollars; and which said goods and chattels had been and were before then let to hire to said Eustace W. Barron and William E. Barron for a certain time then to come and unexpired, and the same were then in the possession of the said Barrons under and by virtue of the said letting, to wit, at the county aforesaid. Yet the said defendants, well knowing the premises, but continuing, and wrongfully and unjustly intending to injure, prejudice, and aggrieve the said plaintiffs in the reversionary estate and interest of and in the said messuage and premises, with the appurtenances, and in their reversionary interest and property in said goods and chattels, and to deprive them of the benefit and advantage thereof, which the said plaintiffs were the owner and proprietor of the said goods and chattels, and whilst the
same were so let to and in the possession of the said Barrons
9 as aforesaid, and whilst the said messuage and premises were
so in the occupation of the said tenants as such tenants thereof to the said plaintiff as aforesaid; and whilst the said plaintiffs were so interested in the said messuage and premises and said goods and chattels, to wit: on the first day of March, 1862, and on divers other days and times between that day and before the commencement of this suit, at the county aforesaid, wrongfully, unjustly, and negligently, without leave or license of and against the will of the said plaintiff, maintained and kept a dangerous, insufficient, decayed, ruinous, and improperly erected steeple or spire of great height, to wit, one hundred and ten feet, on the premises of said defendant, which were

near to the said messuage and premises, and said goods and chattels of said plaintiffs; and said defendants, well knowing the same, wrongfully, unjustly, and negligently, notwithstanding the said spire or steeple was dangerous, insufficient, decayed, ruinous, and imperfectly erected, and notwithstanding they, the said defend-
10 ants, of right ought to have repaired or removed the same, negligently and wrongfully neglected or refused to repair or remove the same, and the said spire or steeple being thus maintained and kept by the said defendants, and also being thus without the proper and necessary repairs, in consequence thereof fell and tumbled down, to wit, on the day and year last aforesaid, and by which fall of the said spire or steeple of the said defendants the brick tenements of the said plaintiffs, situate on and being part of their messuage and premises aforesaid, was destroyed, crushed in, and entirely demolished, breaking and throwing down the walls, joists, rafters, floors, and beams of the said messuage, tenement, and premises of the said plaintiffs, and by means whereof also the said goods and chattels aforesaid of the said plaintiffs were broken, spoiled, and destroyed.

By means of which said several premises the said plaintiffs have been and are greatly injured, prejudiced, and aggrieved in their revisionary estate, and interest of and in the said messuage and premises with the appurtenances, and in their reversionary
11 estate, interest, and property of and in the said goods and chattels, so in the possession and occupation of the said Barrons as tenant thereof to the said plaintiffs as aforesaid, to wit, at the county aforesaid. And by means thereof the said plaintiffs lost the rent of the said messuage and premises for and during the unexpired term for which they were demised as aforesaid to the said Barrons, that is from the fall of said steeple or spire to the end of the term for which they were demised to said Barrons. And by means thereof said plaintiffs lost the hire of the said goods and chattels for and during the unexpired time last aforesaid, for which they were let to hire to said Barrons. And by means thereof the said plaintiffs lost the rent for the said messauge and premises during the time necessarily consumed in the repair of the said messuage and premises, to wit, three months, and which was after the expiration of the said term for which they were demised to said Barrons. And also by
12 means of the premises the said plaintiffs have been and are otherwise greatly injured and damnified to wit, at the county aforesaid.

For that whereas, also, before and at the time of the committing of the grievances hereinafter mentioned said defendants and the trustees of the First Baptist Church, a religious congregation, in the city of Washington, in the District aforesaid, by virtue of a certain deed recorded in Liber J. A. S. No. 190, fol. 252, et seg., one of the land records for said county, and by virtue of an act of Congress approved 17th June, 1844, the said trustees of the said congregation may sue and be sued in their own names in relation to the title, possession, or enjoyment of of such land, and all buildings and other improvements thereupon, as they might possess.

And whereas, also, a certain messuage and premises with the appurtenances, situate in the county aforesaid, was in the possession of two certain persons, to wit, Eustace N. Barron and William E. Barron, as tenants thereof to the said plaintiffs, the reversion thereof, then and still belonging to the said plaintiffs, to wit, at the county aforesaid.

And whereas, also, the said plaintiffs before and at the time
13 of the committing of the grievances hereinafter mentioned,
er the owner and proprietor of divers goods and chattels, to wit: 1 bath oil-cloth, 2 wooden chairs, 1 wooden table, 9 prints framed, 1 small looking glass, 1 marble basin, 14 prints framed, 1 map and set colored charts, 4 chairs, 2 stools, 1 small table, 1 carpet, 5 chairs, 2 stools, 1 table with cover, 1 straw matting, 2 light brackets, 16 prints framed, 2 alabaster vases, 1 inkstand, 1 papier mache writing-stand, 2 large plaster figures, 1 centre-piece, shelves fixed to wall with glass doors, 2 bedsteads and bedding, 6 chairs, and other personal property of great value, to wit: of the value one thousand dollars, and which said goods and chattels had been and were before then let to hire to said Eustace M. Barron and William E. Barron for a certain time then to come and unexpired, and the same were then in possession of the said Barrons under and by virtue of the said letting, to wit, at the county aforesaid. Yet the said defendants as trustees aforesaid, well knowing the premises, but contriving and wrongfully and unjustly intending to injure, prejudice,
14 and aggrieve the said plaintiffs in their receiving estate, interest, and property of and in said messauge and premises, and said goods and chattels, and to deprive them of the benefit and advantage thereof, whilst the said plaintiffs so were the owner and proprietor of the said messuage and premises and goods and chattels, and whilst the same were so in the possession and use of the said Barrons as aforesaid, to wit, on the first day of March, 1862, and on divers other days and times between that day and before the commencement of this suit, at the county aforesaid, wrongfully, unjustly, and negligently, without the leave or license of, and against the will of, the said plaintiffs, maintained and kept a dangerous, insufficient, decayed, ruinous and improperly erected steeple or spire of a great height, to wit, one hundred and ten feet, on the land and premises which has been conveyed to said defendants in the said deed, as aforesaid, and which land and premises were near to the said messuage and premises and said goods and chattels of said plaintiffs; and said defendants as trustees aforesaid, well knowing the same, wrongfully, unjustly, and negligently, notwithstanding the said spire or steeple was
15 dangerous, insufficient, decayed, ruinous, and improperly erected, and notwithstanding they, the said defendants as trustees aforesaid, ought to have repaired or removed the same, negligently and wrongfully neglected or refused to repair or remove the same, and the said spire or steeple being thus maintained and kept by the said defendants as trustees as aforesaid, and also being thus without the necessary and proper repairs by said defendants as trustees aforesaid, in consequence thereof fell and tumbled down, to wit, on the

day and year aforesaid, and by which fall of the said spire or steeple the brick tenement of the said plaintiffs, situate on and being part of their messuage and premises aforesaid, was destroyed, crushed in and entirely demolished, breaking and throwing down the walls, joists, rafters, floors, and beams of the said messuage, tenement, and premises of the said plaintiff, and by means whereof also the said goods and chattels of the said plaintiffs were broken, spoiled, and destroyed.

By means of which said several premises, the said plaintiffs
15½ have been and are greatly injured, prejudiced, and aggrieved in their reversionary estate and interest of and in the said messuage and premises, with the appurtenances, and in their reversionary estate, interest, and property of and in the said goods and chattels so in the possession and occupation of the said Barrons as tenant thereof to the said plaintiffs as aforesaid, to wit, at the county aforesaid.

And by means thereof the said plaintiffs lost the rent for the said messuage and premises during the time necessarily consumed in the repair of the said messuage and premises, to wit, for the space of three months, and which was after the expiration of the said term for which they were demised to the said Barrons.

And by means of the premises the said plaintiffs have been and are otherwise greatly injured and damnified, to wit, at the county aforesaid.

For that whereas, also, before and at the time of the committing of the grievances hereinafter mentioned, said defendants were the trustees of the First Baptist Church, a religious congregation, in the city of Washington, in the District of Col., by virtue of a cer-
16 tain deed recorded in Liber J. A. S. No. 190, fol. 252, et seg., one of the land records for said county, and by which said deed the land and premises on which the spire or steeple hereinafter mentioned was erected; and whereas by virtue of an act of Congress approved 17th June, 1844, the said trustees of said congregation may sue and be sued in their own names in relation to the title, possession, or enjoyment of such land that might be conveyed to them, and all buildings and other improvements thereupon.

And whereas, also, a certain messuage and premises, with the appurtenances, situate in the county aforesaid, was in the possession of two certain persons, to wit, Eustace W. Barron and William E. Barron, as tenants thereof to the said plaintiffs, the reversion thereof then and still belonging to the said plaintiffs, to wit, at the county aforesaid.

And whereas, also, the said plaintiffs before and at the time of the committing of the grievances hereinafter mentioned, as the owner and proprietor of divers goods and chattels, to wit: 1 bath oil-
16½ cloth, 2 wooden chairs, 1 wooden table, 2 prints framed, 1 map and set colored charts, 9 chairs, 4 stools, 2 tables, 1 carpet, 1 straw matting, 2 light brackets, 16 prints framed, 2 alabaster vases, 1 inkstand, 1 papier mache, writing-stand, 2 large plaster figures, 1 centre-piece, shelves fixed to wall with glass doors, 2 bed-

steads and beddings, 6 chairs, and other personal property, of great value, to wit: one thousand dollars, and which said goods and chattels had been and were before then let to hire to the said Barrons for a certain time then to come and unexpired, and the same were then in the possession of the said Barrons under and by virtue of the said letting, to wit, at the county aforesaid.

And whereas, also, it was the duty of the said congregation to keep their said premises in repair. Yet the said congregation well knowing the premises, but contriving and wrongfully and unjustly intending to injure, prejudice, and aggrieve the said plaintiffs in their reversionary estate, interest, and property of and in said messuage and premises and said goods and chattels, and
17 to deprive them of the benefit and advantages thereof, whilst the said plaintiffs, &c., were the owners and proprietor of the said messuage and premises and goods and chattels, and whilst the same were so in the possession and use of the said Barrons as aforesaid, to wit, on the first day of March, 1862, and on divers other days and times between that day and before the commencement of this suit, wrongfully, unjustly, and negligently, without the leave or license of, and against the will of, said plaintiffs, maintained and kept a dangerous, insufficient, decayed, ruinous, and improperly erected steeple or spire of great height, to wit, one hundred and ten feet, on the land and premises which had been conveyed to said defendants in the said deed as aforesaid, and which land and premises were near to the said messuage and premises and goods and chattels of said plaintiffs, and the congregation aforesaid well knowing the same, wrongfully, unjustly, and negligently, notwithstanding the said spire or steeple was dangerous, insufficient, decayed, ruinous, and improperly erected, and notwithstanding they, the said congregation, ought to have repaired or removed the same, negligently and unlawfully neglected or refused to repair or remove the same, and the said spire or steeple being thus maintained and kept by the said congregation, and also being thus without the necessary and proper repairs by said congregation, in consequence thereof fell and tumbled down, to wit, on the day and year last aforesaid, and by which fall of the said spire or steeple the brick tenement of the said plaintiff, situate on and being part of their messuage and premises aforesaid, was destroyed, crushed in, and entirely demolished, breaking and throwing down the walls, joists, rafters, floors, and beams thereof, and by means whereof, also, the said goods and chattels of the said plaintiffs are broken, spoiled, and destroyed.

By means of which said several premises the said plaintiffs have been and are greatly injured in their reversionary estate and
17½ interest of and in said messuage and premises and goods, and chattels, &c., in the possession of the said Barrons as tenants thereof, as aforesaid.

And by means thereof the said plaintiffs have lost the rent of the said messuage and premises for and during the unexpired term for which they are demised to the said Barrons as aforesaid, that is, from

the time of the fall of the said steeple or spire to the end of the term for which they were demised to said Barrons.

And by means thereof said plaintiffs have lost the hire of the said goods and chattels for and during the unexpired time last aforesaid for which they were let to said Barrons.

And by means thereof the said plaintiffs have lost the rent for the said messuage and premises during the time necessarily consumed in the repair of the said messuage and premises, to wit, for the space of three months, and which was after the expiration of the said term for which they were demised to the said Barrons.

And also by means of the premises the said plaintiffs have been and are otherwise greatly injured and damnified, to wit, at the county aforesaid, to the damage of ten thousand dollars.

DAVIDGE & PHILLIPS, *for Pl'ffs.*

Rule plea.

Thereupon, on motion of the said plaintiffs, by their attorneys, aforesaid, it is ruled by the court that the said defendants answer to the declaration aforesaid of the said plaintiffs, in the plea aforesaid, or judgment by the court will be rendered against him in default thereof.

Not guilty, issue joined, venire facias.

And the said defendants, by his said attorney, comes and defends the wrong and injury, when, &c., and says that they are not guilty
18 of the said supposed grievances above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them. And of this they, the said defendants, put themselves upon the county; and the said plaintiffs in like manner and so forth. Therefore let a jury appear, and so forth, &c.

May term, 1863.

At the May term 1863, of said court, the attorney for said defendants comes into court and suggests the death of said defendant, William V. H. Brown, and by consent of parties the further proceeding in this cause was continued.

On the 24th day of Oct., 1864, the said cause was noticed for trial, to take place at a circuit court of the supreme court of the D.
19 C., to be held on the first Tuesday of November, 1864; and at the same time was filed the following memorandum of agreement.

Mem.—It is agreed that all matters of defence which might be pleaded, may be given in evidence under the general issue, in the same manner as if specially pleaded.

BRADLEY, *for Def't.*
DAVIDGE & PHILLIPS, *for Pl'ffs.*

And thereupon further process of and upon the premises aforesaid is continued until the first Tuesday of February, 1865.

February term, 1865.

And now, to wit, the said first Tuesday of February, 1865, come again into court here as well the said plaintiffs as the said defendant, by their attorneys aforesaid. Whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the panel of petit jurors returned to the court here, who being
19½ called come, to wit: J. S. Harvey, Richard Bridget, John King, John H. Russell, J. H. McNantz, Patrick McDevitt, Michael Hoffar, B. H. Rochat, Levi Cohen, John Anderson, William H. Langely, William Skinner.

Verdict.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, (after having received the instructions of the court,) that they find the issues for the defendant.

Motion for new trial.

The plaintiffs, by their attorneys, move the court to set aside the verdict, and grant a new trial of the cause upon the exceptions settled in the same, and filed, and the court orders that said
20 motion be heard in the first instance in the general term.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here the plaintiffs, by their attorneys aforesaid, filed in court here the following bill of exceptions:

Plaintiffs' bill of exceptions.

21 In the Supreme court of the District of Columbia.

BRIEN *et al.*, pl'ffs,
v.
FORCE *et al.*, def'ts.

To maintain the issue in the above-entitled cause on the part of the plaintiffs, the plaintiffs gave evidence before the jury tending to show that the plaintiffs were before and at the time of the injury in their declaration complained of the owners in fee simple of a certain messuage and tenement in the city of Washington, District of Columbia, and situate near to the premises of said defendants hereinafter described, and that the same at the time of the said injury was rented to and in possession of Eustace W. Barron and Barron, as tenants thereof to said plaintiffs, and that said plaintiffs are entitled to the immediate reversion thereof; that said plaintiffs are also the owners at the same time of certain goods and chattels contained in and about said messuage and tenement, which were let to hire to the said Barrons, and were at the time of the said injury in possession of the said Barrons, and that said plaintiffs are entitled to the immediate

reversion of said goods and chattels; that said defendants, at
22 the time of the committing of the grievance in said declaration complained of, are members of the First Baptist Church, a religious congregation, in said city and District, and in full communion therewith; that the said defendants were the persons to whom the property set forth in the following deed was conveyed, and then read the following deed duly acknowledged and recorded in the land records for Washington county, D. C., in Liber J. A. S. No. 190, fol. 252, et seq:

Deed—Jos. C. Lewis and others, trustees, to Isaac Clarke and others, trustees, recorded 11th January, 1860.

"This indenture, made the twenty-third day of September, in the year of our Lord one thousand eight hundred and fifty-nine, between Joseph C. Lewis, David W. Heath, and Thomas B. Griffin, all of the county of Washington, in the District of Columbia, trustees of the Fourth or Thirteenth street Baptist church, in the city of Washington, in said District, of the first part, and T. H. Stickney, of said county, secretary of the said church, of the second part, and Isaac Clarke, William Q. Force and William V. H. Brown, all of
23 said city, trustees of the First Baptist church, in said city, of the third part: Whereas the members of the said Thirteenth street Baptist church, at a meeting duly and lawfully held and assembled, did, on the nineteenth day of September, A. D. 1859, determine and resolve and agree to sell and convey the piece or parcel of ground and premises hereinafter described, unto the said parties of the third part, as trustees aforesaid, in evidence whereof the said party of the second part, as security as aforesaid, hath hereunto set his hand and seal: Now, therefore, this indenture witnesseth that the said parties of the first part, as *as* trustees as aforesaid, for and in consideration of the premises aforesaid, and by the appointment and direction of said church, and further, the sum of ten dollars, in lawful money of the United States, to them in hand paid by the said parties of the third part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, and convey, unto the said parties of the third part, and the survivors and survivor of them, his heirs and assigns, all that *all that* certain piece
24 or parcel of ground situate and lying in the said city of Washington, and being known and described as being a part of lot numbered nine, (9,) and all of lot numbered ten, (10,) in square numbered two hundred and eighty-eight, (288,) and being described as follows: beginning for the same at the northwestern corner of said lot numbered ten, (10,) and from thence running east one hundred and fifty-five (155) feet and one and one-half (1½) inches; thence south forty-five (45) feet; thence west twenty (20) feet; thence south twenty (20) feet; thence west one hundred and thirty-five (135) feet and one and one-half (1½) inches, to the line of Thirteenth street west; and thence north, along the said street, sixty-five feet (65) to the place of beginning, and being the same premises

heretofore used and occupied by the said Thirteenth street Baptist church, together with all the improvements, buildings, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of
25 the first part, or any of them, as trustees as aforesaid, or otherwise, of, in, to, and out of the said piece or parcel of ground and premises, or any part thereof. To have and to hold the said piece or parcel of ground and premises and appurtenances, with and to the use of the said parties of the third part, and the survivors or survivor of them, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared—that is, in trust for the use and benefit of the said First Baptist church, in said city, and for the purposes of religious worship, according to the mode, form, and usages of the said church, and for such other uses and purposes as the said church shall and may at any time designate, consent to, or appoint. And upon this further trust, at any time hereafter, at the instance or appointment or direction of the said First Baptist church, to sell, dispose of, and convey in fee simple, or convey in trust, in the nature of a mortgage, or convey or demise for any term or time the said piece or parcel of ground and premises, or any part thereof, to such person or persons, and for such uses and purposes, and in such manner as may be lawfully directed, prescribed, or appointed by the said church.

"In testimony whereof, the said parties of the first part, as trustees as aforesaid, and the said party of the second part, as
26 secretary as aforesaid, have hereunto set their hands and seals on the day and year first hereinbefore written.

"JOSEPH C. LEWIS. [SEAL.]
"D. W. HEATH. [SEAL.]
"THO'S B. GRIFFIN. [SEAL.]
"F. H. STICKNEY, *Secretary, &c.* [SEAL.]

"Signed, sealed, and delivered in presence of—
"THOMAS C. DONN.
"F. I. MURPHY.

"DISTRICT OF COLUMBIA, *County of Washington, sct:*

"We, Thomas C. Donn and Francis I. Murphy, justices of the peace in and for the said county of Washington, in said District, do hereby certify that Joseph C. Lewis, David W. Heath, and Thomas B. Griffin, parties to a certain deed bearing date on the twenty-third day of September, A. D. 1859, and hereunto annexed, personally appeared before us in our county aforesaid, the said Lewis, and Heath, and Grffin being personally well known to us as the persons who executed said deed, and acknowledged the same to be their act and deed.

"Given under our hands and seals, this twenty-ninth day
27 of December, A. D. 1859.

"FRANCIS C. DONN, *J. P.* [SEAL.]
"F. I. MURPHY, *J. P.*" [SEAL.]

And thereupon read the act of Congress, approved June 17th, 1844, following:

"An act concerning conveyances or devises of places of public worship in the District of Columbia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any lot or part of a lot, tract, or parcel of land has been heretofore conveyed or devised to one or more trustees, for the use and benefit of any religious congregation as a place of public worship, the same and all buildings and other improvements thereupon shall be held by such trustee or trustees (or their successors) for the purpose of the trust, and not otherwise.

"SEC. 2. *And be it further enacted*, That when any conveyance or devise has been heretofore or shall hereafter be made of such property for the use, and benefit, and purpose aforesaid, the same shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed in the manner hereinafter directed.

"SEC. 3. *And be it further enacted*, That when such conveyance or devise has been heretofore or shall hereafter be made, whether by the intervention or trustees, or not, the circuit court of the District of Columbia, sitting in the county where such property is or may be situated, shall, on application of the United States attorney for the District of Columbia, on behalf of the authorized authorities of any such religious congregation, have full power and authority to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the county, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors.

"SEC. 4. *And be it further enacted*, That a majority of the acting trustees for any such congregation may sue and be sued in their own names, in relation to the title, possession, or enjoyment of such property without abatement by the death of any of the trustees, or substitution of others; but the action or suit may, notwithstanding, be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings had in relation thereto, in like manner as if such death or substitution had not occurred: *Provided, however*, That such trustees, for the use of any religious congregation, shall not hereafter take or hold at any one time any tract of land in the county exceeding in quantity fifty acres, or in any incorporated town exceeding three acres; nor shall such real property be held by them for any other use than as a place of public worship, religious or other instruction, burial ground, or residence of their minister.

"Approved June 17, 1844."

The plaintiffs then offered testimony tending to show that the premises set forth in the said deed were the premises set forth in

the declaration, and that the same were near to the said premises of said plaintiffs, only being separated therefrom by an alley fifteen feet wide. That in 1855, while the grantors in the said deed of trust held the said premises set out in said deed, as trustees for a certain religious congregation called the 13th Street Baptist Church,
30 in said city and District, and subsequent to the building of said tenement of said plaintiff, a church edifice fronting west was erected on the said premises which was so held by the said grantors, and which they afterwards, in 1859, by their said deed conveyed as aforesaid to said defendants. That a part of said edifice consisted of a wooden spire, erected whilst the grantors
and about a year after the erection of said tenement, about 120 feet in height, having a base of 20 feet square, and was constructed in the following manner:

The front (western) wall of the church and the vestibule wall were situated at a distance of 16 feet from one another, and parallel. The brick part of the vestibule wall only ran as high as the choir gallery of the church, and two iron columns were placed on it at a distance of twenty feet from each other, thus completing what is termed the vestibule wall. These two walls formed the eastern and western foundations of the spire, and on them was formed a wooden platform of 20 feet square on which the spire stood, and was constructed as follows:

Two girders running north and south were placed thus: one of them on the front wall of the church, and fastened into the
31 wall by iron rods, and the other at a distance of 16 feet, and rested on the two irons columns, which were supported by the brick part of the said vestibule wall. On these two girders were thrown across, where the foundation was formed for the spire, (that is at a distance of 20 feet from each other,) two joists of white pine 8 by 10 inches, and twenty feet in length, running east and west. Their west ends resting in the girder which was fastened as aforesaid into the west wall of the church, and their east ends extending four feet beyond the girder, which rested on the iron columns of the vestibule wall.

That the spire was constructed of four heavy beams, and the two which composed the eastern side came directly on the ends of the two joists which projected four feet beyond the vestibule wall, and that these joists had no support whatever at their ends, so that the eastern base of the spire was four feet beyond the wall or iron columns which formed its eastern support and which carried
32 its full proportionate weight of said spire.

The plaintiffs, to show that it might have been discovered that the said spire was imperfectly and improperly erected, introduced several witnesses, who, on their examination and cross-examination, testified as follows:

Q. Do you recollect whether or not the base of that steeple was plumb with and fastened in with the ceiling of the building so that you could not see how that was constructed?

A. Certainly not from the interior of the church. You could only

have discovered that by going up and looking to see how the steeple was constructed.

Q. State whether there was anything to attract the attention of persons entering that church and walking about and looking at it, as to the manner in which the base of that spire was constructed.

A. There was nothing projecting through so as to be visible in the church, but the material composing the base was worked into the ceiling-joists.

THE COURT. Would unskilled observation detect the defects in the plan?

A. I think not. If I had not, in reconstructing the church, made an examination, perhaps I would not have noticed it myself.

33 Q. So that there was really nothing in the structure to direct the attention, even of a builder who was going in, unless he went there for the purpose of making an examination.

A. No, sir.

Q. Mr. Fague, whilst this foundation was being constructed was there any difficulty in seeing that it projected four feet from below?

A. No, sir; you would not see it at all. The ceiling hid it, as it reached above the ceiling about ten inches.

Q. There was, I believe, a trap-door leading into the foundation of the spire.

A. There was on the west side next to 13th street, just back of the organ.

Q. Did it open up into the organ-loft?

A. Yes, sir.

Q. Sitting in there was there any difficulty of seeing the plan of construction?

A. No, sir, not if you were in there.

Q. I think I forgot to ask you one question. You recollect the storm raging at the time this steeple was blown down.

A. Yes, sir.

Q. Were you out in the street?

A. I believe I was.

34 Q. You have already stated you are a master-builder.

A. Yes, sir.

Q. I wish to know whether, in your opinion, had the eastern line of the foundation of that spire been secured, had it not rested upon these joists, projecting four feet, it would have withstood that blow?

A. I have stated that there was no danger whatever of its falling had it stood on the columns.

Q. I wish to know whether any competent and skillful workman going up into the spire and seeing the projection that you have mentioned could not have reached some conclusion as to the security or insecurity of that foundation.

A. There is no doubt of that.

I wish to state one thing: I was asked the question in regard to the number of bricks necessary to complete this building. I said I thought it took some 15 or 20,000. I think now it required between 27 and 30,000.

Edward Clark, sworn.

By Mr. Davidge:

Q. What is your profession?

35 A. I am an architect.

Q. How long have you been engaged in that profession?

A. Eighteen or twenty years.

Q. What experience have you had?

A. Constructing public and private residences of various kinds.

Q. Do you recollect the spire on the Baptist church on 13th street between G and H, that was blown some years ago?

A. Yes, sir.

Q. Do you know anything of the plan of the construction of that spire? If so, state your knowledge on the subject.

A. I made the plan of it myself.

Q. Is this it? (showing witness a diagram.)

A. It is a tracing of it.

Q. Describe to the jury what these different diagrams represent.

(Witness did as requested.)

Q. According to the evidence the spire was not constructed upon walls, as designed apparently by you from these figures. Your design was to have that spire rest upon a foundation supported

36 directly by the west wall and vestibule wall, and to have the foundation bolted or tied into these two walls.

A. Yes, sir.

Q. Do you know whether that plan was carried out?

A. I cannot say. I have never been there to see the construction. I made this plan and presented it to the pastor, and that is all I had to do with it.

Q. You can state what passed between you and the pastor in reference to a deviation from that plan, regarding the foundation of the spire.

(Objected to by the defendant. Objection sustained.)

Q. Mr. Clark, have you any idea of the weight of that steeple?

A. No, sir.

Q. You can make a calculation of the weight.

A. Yes, sir.

Mr. Davidge. I wish you would do so at your leisure.

Q. What was intended to go here, (pointing to the place on the diagram,) where that circle is?

A. It was the intention to put a clock there, but I think that was abandoned.

37 Q. Your plan contemplated the east and west foundations of the spire to rest upon the outer wall of the church and vestibule walls.

A. Yes, sir.

Q. Do you know the distance that those two walls are apart—the distance of the west wall from the vestibule wall?

A. Only from the representations of Mr. Teasdale.

Q. Supposing that that spire was not so much as designed, but projected over beyond the vestibule wall some three or four feet,

resting on joists six by eight, what in your opinion would be the inevitable result?

A. It would blow over.

This (pointing to a figure on the diagram) might be anchored so that it would not go over, but unless anchored in the front wall it would be impossible to keep it up.

Q. Mr. C., did you see this spire frequently?

A. Yes, sir.

Q. Did it attract your attention?

38 A. Yes, sir, by its leaning inward to the east.

Q. Was it out of plumb?

A. Considerably so.

Q. How long did you see it out of plumb before it tumbled down?

A. I should judge about a year.

Q. Could not any practised eye, looking at that steeple, see that it was out of plumb?

A. Yes, sir.

Q. Mr. Clark, supposing they had chosen to go beyond the plan as drawn by you in regard to the inner foundation, (the east foundation,) extending over the vestibule wall, was there any way of tying that extension to the lateral walls or the east wall, so as to in some way distribute the weight thrown upon this extension?

A. Walls of a limited size might have been built right under this projection at right angles with the vestibule wall, which would have given the desired foundation.

Q. What I want to know is whether, independently of these angular walls running out from the vestibule wall at right angles, it would have been practicable to make that extension bear the

39 weight of the tower?

A. I do not know that it would to make it a secure foundation.

Q. What foundation did a structure of that sort require according to the laws of architecture? You allowed 20 feet. Would that be the least?

A. I think that would be the least consistently with security for a modern spire of that elevation.

Q. Mr. Clark, you never examined particularly that work.

A. No, sir.

Q. So far as your eye would enable you to judge did the plan conform in the outward appearance to this plan?

A. In passing the building in the course of its construction I observed the frame-work was identical with the plan.

Q. And so far as you know with some minor details of ornament and things of that sort, this plan was carried out with only the great defect of not carrying the foundation where you designed it to be placed.

A. Yes, sir, I believe so.

40 Stoughton sworn.

By Mr. Davidge:

Q. Do you know of this spire on the Baptist church?

A. Yes, sir.

Q. Before I ask you anything about that, I would like to know your profession, and how long you have pursued it.

A. I am now a solicitor of patents. I was formerly a civil engineer.

Q. Did you frequently see this spire?

A. Yes, sir, every day. I live within a hundred yards of it.

Q. Do you know how long it stood before it was blown down?

A. I do not know the number of years exactly, but I have lived where I now reside for eleven years; and I have seen ever
41 since it was erected until it was blown down.

Q. I wish you to state to the jury the appearance presented by this spire some time before it fell, as regards security.

A. The spire, in my judgment, was evidently out of perpendicular for some time. I could not say how long. Probably for six months or a year.

Q. Could any one see that on looking at it?

A. Yes, sir. I could detect it by the eye, and I think I called the attention of one or two persons to it.

Q. What was the tendency of it?

A. It leant in an easterly direction.

42 Q. You have had a good deal of experience as an engineer?

A. Not much in the construction of houses.

Q. Are you familiar with the study of architecture?

A. I have studied architecture, but not house architecture.

Q. We are examining here the security of this spire. We find that it was built upon a square piece of 20 feet. That the western line of the foundation rested on the church wall. That 16 feet inside of the church wall was the vestibule wall of the church below. That upon that wall were placed two iron columns in the choir; and that the foundation of this spire extended 4 feet beyond these two iron
43 columns in the choir, and that the foundation of these spire extended four feet beyond these columns, and rested on joists, so you perceive one side rested on the west wall of the church, the other side, not on the columns, but on a line say three or four feet east of the columns. Would you think that a secure and stable structure?

A. No, sir, I would not.

Cross-examination by Mr. Bradley:

Q. Did you ever shoot a rifle?

A. I have not shot one for a good many years.

Q. As a civil engineer you have a pretty active eye?

A. Yes, sir.

44 Q. State to the jury the appearance of the steeple for some time before it blew down, as respects the security.

A. Well, judging by the eye, I should think it leant to to the east about 7 inches; certainly not less.

45 Q. How long after it was put up?

A. I suppose it was 12 or 13 months.

Q. Did the leaning increase afterwards?

A. Yes, sir, it had to increase.

Q. What was the effect of the wind upon it?

A. It vibrated to and fro. It would increase on going over to the east or the west side.

Q. How do you know that was the west side?

A. From the manner in which it was constructed.

Q. Mr. Plant, if a competent mechanic went into the interior of that spire and looked at the foundation, would he not discover a defect in the construction?

46 A. I should think so, if he had any judgment about building.

Q. Then Mr. P., from the original construction of this spire you regarded as built upon a defective plan?

A. I do not think there is a shadow about it.

Mr. Cooper, continued:

47 Q. Then you are speaking about the east line of the foundation of that steeple. Did it extend at all beyond that vestibule wall east of it? and if so, how long?

A. I do not think it extended any beyond that.

Q. Did you ever examine it particularly?

48 A. Well, I looked at it going up, and I looked at it after it fell down. There was a collar beam, or a ceiling joist that went across, and the spire stood on that. There were also two columns underneath, of iron.

Q. On what did the west line of the foundation of that spire rest?

A. Well, there was a piece of timber run into the front wall of the building, and it rested on that.

Q. Did it rest on the west wall, or a piece of timber?

A. The piece of timber rested on the front wall—let into it.

Q. And that was the west line of the spire?

A. Yes, sir.

49 Q. Then you think the east end of the spire was directly underneath and supported by these columns which in their turn were kept up by the inner wall below. What was the space between the west wall of the church and the iron columns above used for?

A. There set the organ.

Q. How did people get to the choir?

A. There was a stairway run up between the two walls of the vestibule.

Q. Then below on entering the church you faced the centre western wall?

A. Yes, sir.

Q. You were then in a vestibule with the staircase coming down on either side?

A. Yes, sir.

Q. And then you faced into the church?

50 A. Yes, sir.

Q. You then went up the stairs which took you into the choir?

A. Yes, sir.

Q. And then above, resting on these inner walls, were these two iron columns; and above that this spire?

A. Yes, sir.

Q. You state, Mr. Cooper, that you lived near this church and saw the spire fall. State if you had previously observed this spire, and what the effect of an ordinary blow upon it was.

A. Well, I have often passed it when they were building it, and I then thought that the foundation was not a proper one to put such a spire on.

51 Q. Why not? Was not the foundation sufficient?

A. It was set, as you might say, on the top of the church. It had no weight to help it down. It was supported on joists running down the church.

Q. How were these joists tied into the wall?

A. They were not tied at all. They laid right on the wall, and the rafters of the church struck right on the end of them.

Q. What brick work was there over them so as to make them solid?

A. Nothing but the ordinary finish.

Q. How many bricks, do you suppose, were above these joists?

A. I suppose about 9 bricks.

52 Q. What I want to get at is this: Here are the rafters running up on either side, then here below are the ceiling joists. Now I want to know what brick support that joist had at that angle, where the rafters came down and were laid into the joists.

A. There was no brick at all there, because the brick was run up on the outside of it to form a projected cornice.

Q. Mr. BRADLEY. Are you talking about the north and southside of the church?

Mr. DAVIDGE. Yes, sir.

53 Mr. BRADLEY. What connexion had they with this steeple?

Mr. DAVIDGE. I will show that it had the most abundant connexion; that one of the defects was in not properly securing the ends of these joists.

Q. You have stated that you did not regard that foundation as secure when the spire was building. Did anything afterwards occur to confirm you in that opinion?

A. Yes, sir. Every time that the wind blew I felt fearful lest the steeple would blow down, and when that storm commenced I went to the window for the purpose of seeing how it stood.

Q. What did you see?

54 A. After waving backwards and forwards several times it came over.

Q. Before the fall what was the effect of ordinary blows upon it?

A. Well, it would be moved backwards and forwards.

Q. How did it oscillate?
A. In whatever direction the wind blew.
Q. Do you know how the interior of this spire was constructed?
A. The spire itself was, I think, made well.
Q. I want to know the manner in which it was put together?
A. It was framed together, run up in large pieces, and these pieces framed all round.
55 Q. Had girders?
A. Yes, sir.
Q. What I want to know is, whether when it waggled to and fro the ties of the different sections did not become weaker.
A. Of course they became weaker, but I never expected to see them break. The spire, I think, was well built. The fault was in the foundation.
Q. How often did you see it waggling in the manner you have described?
A. I cannot tell the number of times.
Q. Give the jury some idea. I want to know whether it was frequently or rarely the case.
A. Whenever I was in the neighborhood, and the wind was
56 blowing pretty strong, I always looked up to see whether the steeple would not waggle over.

57 Job Argurs sworn.
By Mr. DAVIDGE:
Q. What is your occupation?
A. I am a builder.
Q. You have been employed as such many years?
A. Yes, sir.
Q. You know the spire of the 13th street?
A. Yes, sir.
Q. I wish you would explain to the jury the manner in which the foundation of that spire was constructed.
A. Mr. Jonathan Eader built that spire. Having worked for me some two or three years previously, he called on me once or
58 twice about it. He threw a girder *girder* running north and south; that rested on two iron columns, and divided a portion between two walls of the main outway; then he threw the joists the other way, having them project some two, three, or four feet; on that he built his foundation.
Q. The girders run all along from north to south?
A. Yes, sir; the girders of the tie beams or main roof run north and south.
Q. How far apart?
A. I do not know; I suppose from eight to ten feet.
Q. And from girder to girder run joists between?
A. Yes, sir.
Q. And where the foundation of the spire was, the caps of
59 the columns were under *were under* a girder of which you speak; and then run the posts between that girder and the one immediately east of it?

A. The joists rested on that girder. That was the foundation for starting the spire.

Q. Then the eastern line of that foundation did not rest on the girding, but on the joists, some two, three, or four feet beyond the girder?

A. Yes, sir, between that girder and the next girder to the east; that was, I suppose, some four or five feet off from the end of the foundation.

Q. Mr. Augurs, do you know how the west foundation of the spire was secured?

A. No, sir; it was intended for that girder to take that weight, and those joists went over to receive that foundation. The de-
60 sign was that these joists run from girder to girder should take that part of the weight.

Q. But turn your mind to the west weight of the foundation.

A. That rested on the brick wall.

Q. Was there any other arrangement than what you have mentioned for distributing the weight of the foundation and spire?

A. No other, unless it was continuing the girder out to the extreme side of the spire. By putting the girder to the extreme ends of these joists or side of the spire there would have been secured a square foundation.

Q. By either running out further the girder to the west of the east line of the foundation, or by putting another girder there, the eastern line of the foundation would have been a solid girder?

A. Yes, sir.

61 Q. As I understand the principle of that foundation it rested on the wall. On the east it was sustained by the joists running east and west between the girders that run north and south, and it projected from the girder running north and south supported by the iron columns below, some two, three, or four feet. You do not know how many?

A. Yes, sir.

Q. What was the height of that spire?

A. I do not know the exact height. I think may be from 100 to 120.

Q. From the top of the church, or from the ground?

A. I think 175 from the ground up.

Q. Was there a bell in the spire?

A. I do not know. There was none when I was there.

62 Q. Was it a secure piece of work, Mr. Angus? Would you have built on that foundation such a spire as was built?

A. The brick work of the spire was done well. My opinion of it all depended upon whether it would leave its base. The bottom did not certainly go down, because after it blew down the columns remained.

Q. Was that column secured to that base?

A. I do not know, but whoever took it down ought to be able to tell all about it.

Q. I speak of the principle of extending the eastern line of the foundation of this spire two, three, or four feet east of the iron gir-

ders that formed its eastern support. I wish your opinion on that subject.

63 A. All steeples will vibrate; I have seen them do so to the extent of some three or four feet and still remain good. That vibration, if it happened to blow east would have been a little more apt to break the middle of those joists which broke off beyond the girder. Timbers will naturally settle and bend in time. This girder may have bent some, after being there some time.

Q. Would you have built such a steeple on such a foundation?

A. I do not know but that I should have built it; I bid on the spire.

Q. What was the cause of the fall?

A. I do not know; there was a heavy wind blowing at the time.

Q. Do you know what part of the foundation gave way?

A. No, sir.

64 Q. Do you mean to say you think it was correct to trust *to trust* to the joists between these girders, the immense weight resting on that eastern side of the foundation?

A. It would have been in certain cases.

Q. I speak of on any, and all cases.

A. If they had been heavy enough. I did not see what timbers were put in there. He may have put timbers in there strong enough to hold. Whoever tore it down can tell. I know how it was intended to be supported.

Q. Have you any idea of the weight of that spire?

A. I have not.

That on the 24th of February, 1862, while the said edifice was used as a place of religious worship, by the said First Baptist Church,

65 and while the defendants were trustees under the said deed, and while the defendants were members as aforesaid of the said congregation, and during a storm, the character of which is shown by the following testimony:

66 Robert Ball sworn.

By Mr. Davidge:

Q. What is your occupation?

A. I am a clerk in the city P. O.

Q. What was it in 1862?

A. A letter-carrier.

Q. Were you present when this steeple over the Baptist church, on 13th street, tumbled down?

A. While standing in the SW. corner of 13th and F streets, I noticed a number of persons looking in the direction of the spire, and on looking around I noticed it raise up on the eastern edge. It appeared firm and whole in every respect, but let go just where it was set up in the church. It raised up the 4th time before it went over. It inclined in an easterly direction.

68 Q. Then the western edge would be elevated?

A. Yes, sir.

Q. How high would the western edge raise up, as well as you can recollect?

A. I suppose two feet. It appeared so from where I was.

Q. When it went up the 4th time what was the result?
A. It went over with a terrible crash.
Q. How did it fall?
A. It fell very nearly due east, possibly a little south of east.
Q. By Mr. Bradley. The storm was a very severe one?
A. Yes, sir; the wind blew quite violently.
Q. by Mr. Davidge. Did it prevent your delivering letters?
A. Not at all; I never stopped for any weather.
69 Q. Have you known as violent or a more violent storm in this city?
A. I think I have, but I could not say positively.

Cross-examination by Mr. Bradley:

Q. When did you ever know such a blow as that?
A. I could not say.
Q. Before or since?
A. Well, I know the wind blew more violent when it carried the roof off of the market-house, 15 years ago.
Q. What did this wind do for the P. O. Dept.?
A. It did no injury that I am aware of.
Q. Don't you recollect it taking off that copper roof the same day this steeple blew down?
A. I do not.
70 Q. Do you recollect of it having blown down the pinnacle of Trinity Church?
A. I recollect of its being blown off, but not the time.
Q. Do you recollect its blowing off the roof of the western market-house the same day?
A. I do not.
Q. Do you recollect of any other steeple or tower being blown down?
A. I did not hear of any.
Q. Do you recollect of the chimneys on Mr. Wormley's houses, on I street, being blown down, and going right through the house?
A. I do not.
Q. Do you recollect of the roof on the house of Mr. , on 6th street, being blown off and carried round on 7th street?
A. I do not recollect of that instance, but I recollect of the
71 roof on Mr. Joe Wilson's house, on 13th street, being blown off.
Q. Do you recollect of two unfinished houses on F street being blown down?
A. No, sir.
Q. Do you recollect of the roof on the house of Mr. Charles F. Green, on the corner of 7th and L streets, being blown off.
A. Yes, sir. I also recollect of a number of trees being blown down.
Q. Do you recollect of this fine tree, on the corner of 7th street and the avenue, being blown down?
A. No, sir.
Q. By Mr. Davidge. I wish to know if it is not a very common thing for metal roofs to be taken off?

A. Well, judging by the eye, I should think it leant to to the east about 7 inches; certainly not less.

45 Q. How long after it was put up?

A. I suppose it was 12 or 13 months.

Q. Did the leaning increase afterwards?

A. Yes, sir, it had to increase.

Q. What was the effect of the wind upon it?

A. It vibrated to and fro. It would increase on going over to the east or the west side.

Q. How do you know that was the west side?

A. From the manner in which it was constructed.

Q. Mr. Plant, if a competent mechanic went into the interior of that spire and looked at the foundation, would he not discover a defect in the construction?

46 A. I should think so, if he had any judgment about building.

Q. Then Mr. P., from the original construction of this spire you regarded as built upon a defective plan?

A. I do not think there is a shadow about it.

Mr. Cooper, continued:

47 Q. Then you are speaking about the east line of the found ation of that steeple. Did it extend at all beyond that vestibule wall east of it? and if so, how long?

A. I do not think it extended any beyond that.

Q. Did you ever examine it particularly?

48 A. Well, I looked at it going up, and I looked at it after it fell down. There was a collar beam, or a ceiling joist that went across, and the spire stood on that. There were also two columns underneath, of iron.

Q. On what did the west line of the foundation of that spire rest?

A. Well, there was a piece of timber run into the front wall of the building, and it rested on that.

Q. Did it rest on the west wall, or a piece of timber?

A. The piece of timber rested on the front wall—let into it.

Q. And that was the west line of the spire?

A. Yes, sir.

49 Q. Then you think the east end of the spire was directly underneath and supported by these columns which in their turn were kept up by the inner wall below. What was the space between the west wall of the church and the iron columns above used for?

A. There set the organ.

Q. How did people get to the choir?

A. There was a stairway run up between the two walls of the vestibule.

Q. Then below on entering the church you faced the centre western wall?

A. Yes, sir.

Q. You were then in a vestibule with the staircase coming down on either side?

A. Yes, sir.

Q. And then you faced into the church?

50 A. Yes, sir.

Q. You then went up the stairs which took you into the choir?

A. Yes, sir.

Q. And then above, resting on these inner walls, were these two iron columns; and above that this spire?

A. Yes, sir.

Q. You state, Mr. Cooper, that you lived near this church and saw the spire fall. State if you had previously observed this spire, and what the effect of an ordinary blow upon it was.

A. Well, I have often passed it when they were building it, and I then thought that the foundation was not a proper one to put such a spire on.

51 Q. Why not? Was not the foundation sufficient?

A. It was set, as you might say, on the top of the church. It had no weight to help it down. It was supported on joists running down the church.

Q. How were these joists tied into the wall?

A. They were not tied at all. They laid right on the wall, and the rafters of the church struck right on the end of them.

Q. What brick work was there over them so as to make them solid?

A. Nothing but the ordinary finish.

Q. How many bricks, do you suppose, were above these joists?

A. I suppose about 9 bricks.

52 Q. What I want to get at is this: Here are the rafters running up on either side, then here below are the ceiling joists. Now I want to know what brick support that joist had at that angle, where the rafters came down and were laid into the joists.

A. There was no brick at all there, because the brick was run up on the outside of it to form a projected cornice.

Q. Mr. BRADLEY. Are you talking about the north and southside of the church?

Mr. DAVIDGE. Yes, sir.

53 Mr. BRADLEY. What connexion had they with this steeple?

Mr. DAVIDGE. I will show that it had the most abundant connexion; that one of the defects was in not properly securing the ends of these joists.

Q. You have stated that you did not regard that foundation as secure when the spire was building. Did anything afterwards occur to confirm you in that opinion?

A. Yes, sir. Every time that the wind blew I felt fearful lest the steeple would blow down, and when that storm commenced I went to the window for the purpose of seeing how it stood.

Q. What did you see?

54 A. After waving backwards and forwards several times it came over.

Q. Before the fall what was the effect of ordinary blows upon it?

A. Well, it would be moved backwards and forwards.

Q. How did it oscillate?

A. In whatever direction the wind blew.

Q. Do you know how the interior of this spire was constructed?

A. The spire itself was, I think, made well.

Q. I want to know the manner in which it was put together?

A. It was framed together, run up in large pieces, and these pieces framed all round.

55 Q. Had girders?

A. Yes, sir.

Q. What I want to know is, whether when it waggled to and fro the ties of the different sections did not become weaker.

A. Of course they became weaker, but I never expected to see them break. The spire, I think, was well built. The fault was in the foundation.

Q. How often did you see it waggling in the manner you have described?

A. I cannot tell the number of times.

Q. Give the jury some idea. I want to know whether it was frequently or rarely the case.

A. Whenever I was in the neighborhood, and the wind was
56 blowing pretty strong, I always looked up to see whether the steeple would not waggle over.

57 Job Argurs sworn.

By Mr. DAVIDGE:

Q. What is your occupation?

A. I am a builder.

Q. You have been employed as such many years?

A. Yes, sir.

Q. You know the spire of the 13th street?

A. Yes, sir.

Q. I wish you would explain to the jury the manner in which the foundation of that spire was constructed.

A. Mr. Jonathan Eader built that spire. Having worked for me some two or three years previously, he called on me once or
58 twice about it. He threw a girder *girder* running north and south; that rested on two iron columns, and divided a portion between two walls of the main outway; then he threw the joists the other way, having them project some two, three, or four feet; on that he built his foundation.

Q. The girders run all along from north to south?

A. Yes, sir; the girders of the tie beams or main roof run north and south.

Q. How far apart?

A. I do not know; I suppose from eight to ten feet.

Q. And from girder to girder run joists between?

A. Yes, sir.

Q. And where the foundation of the spire was, the caps of
59 the columns were under *were under* a girder of which you speak; and then run the posts between that girder and the one immediately east of it?

A. The joists rested on that girder. That was the foundation for starting the spire.

Q. Then the eastern line of that foundation did not rest on the girding, but on the joists, some two, three, or four feet beyond the girder?

A. Yes, sir, between that girder and the next girder to the east; that was, I suppose, some four or five feet off from the end of the foundation.

Q. Mr. Augurs, do you know how the west foundation of the spire was secured?

A. No, sir; it was intended for that girder to take that weight, and those joists went over to receive that foundation. The de-
60 sign was that these joists run from girder to girder should take that part of the weight.

Q. But turn your mind to the west weight of the foundation.

A. That rested on the brick wall.

Q. Was there any other arrangement than what you have mentioned for distributing the weight of the foundation and spire?

A. No other, unless it was continuing the girder out to the extreme side of the spire. By putting the girder to the extreme ends of these joists or side of the spire there would have been secured a square foundation.

Q. By either running out further the girder to the west of the east line of the foundation, or by putting another girder there, the eastern line of the foundation would have been a solid girder?

A. Yes, sir.

61 Q. As I understand the principle of that foundation it rested on the wall. On the east it was sustained by the joists running east and west between the girders that run north and south, and it projected from the girder running north and south supported by the iron columns below, some two, three, or four feet. You do not know how many?

A. Yes, sir.

Q. What was the height of that spire?

A. I do not know the exact height. I think may be from 100 to 120.

Q. From the top of the church, or from the ground?

A. I think 175 from the ground up.

Q. Was there a bell in the spire?

A. I do not know. There was none when I was there.

62 Q. Was it a secure piece of work, Mr. Angus? Would you have built on that foundation such a spire as was built?

A. The brick work of the spire was done well. My opinion of it all depended upon whether it would leave its base. The bottom did not certainly go down, because after it blew down the columns remained.

Q. Was that column secured to that base?

A. I do not know, but whoever took it down ought to be able to tell all about it.

Q. I speak of the principle of extending the eastern line of the foundation of this spire two, three, or four feet east of the iron gir-

ders that formed its eastern support. I wish your opinion on that subject.

A. All steeples will vibrate; I have seen them do so to the
63 extent of some three or four feet and still remain good. That vibration, if it happened to blow east would have been a little more apt to break the middle of those joists which broke off beyond the girder. Timbers will naturally settle and bend in time. This girder may have bent some, after being there some time.

Q. Would you have built such a steeple on such a foundation?

A. I do not know but that I should have built it; I bid on the spire.

Q. What was the cause of the fall?

A. I do not know; there was a heavy wind blowing at the time.

Q. Do you know what part of the foundation gave way?

A. No, sir.

Q. Do you mean to say you think it was correct to trust *to*
64 *trust* to the joists between these girders, the immense weight resting on that eastern side of the foundation?

A. It would have been in certain cases.

Q. I speak of on any, and all cases.

A. If they had been heavy enough. I did not see what timbers were put in there. He may have put timbers in there strong enough to hold. Whoever tore it down can tell. I know how it was intended to be supported.

Q. Have you any idea of the weight of that spire?

A. I have not.

That on the 24th of February, 1862, while the said edifice was used as a place of religious worship, by the said First Baptist Church, and while the defendants were trustees under the said deed,
65 and while the defendants were members as aforesaid of the said congregation, and during a storm, the character of which is shown by the following testimony:

66 Robert Ball sworn.

By Mr. Davidge:

Q. What is your occupation?

A. I am a clerk in the city P. O.

Q. What was it in 1862?

A. A letter-carrier.

Q. Were you present when this steeple over the Baptist church, on 13th street, tumbled down?

A. While standing in the SW. corner of 13th and F streets, I noticed a number of persons looking in the direction of the spire, and on looking around I noticed it raise up on the eastern edge. It appeared firm and whole in every respect, but let go just where it was set up in the church. It raised up the 4th time before it went over. It inclined in an easterly direction.

68 Q. Then the western edge would be elevated?

A. Yes, sir.

Q. How high would the western edge raise up, as well as you can recollect?

A. I suppose two feet. It appeared so from where I was.

Q. When it went up the 4th time what was the result?
A. It went over with a terrible crash.
Q. How did it fall?
A. It fell very nearly due east, possibly a little south of east.
Q. By Mr. Bradley. The storm was a very severe one?
A. Yes, sir; the wind blew quite violently.
Q. by Mr. Davidge. Did it prevent your delivering letters?
A. Not at all; I never stopped for any weather.
69 Q. Have you known as violent or a more violent storm in this city?
A. I think I have, but I could not say positively.

Cross-examination by Mr. Bradley:

Q. When did you ever know such a blow as that?
A. I could not say.
Q. Before or since?
A. Well, I know the wind blew more violent when it carried the roof off of the market-house, 15 years ago.
Q. What did this wind do for the P. O. Dept.?
A. It did no injury that I am aware of.
Q. Don't you recollect it taking off that copper roof the same day this steeple blew down?
A. I do not.
70 Q. Do you recollect of it having blown down the pinnacle of Trinity Church?
A. I recollect of its being blown off, but not the time.
Q. Do you recollect its blowing off the roof of the western market-house the same day?
A. I do not.
Q. Do you recollect of any other steeple or tower being blown down?
A. I did not hear of any.
Q. Do you recollect of the chimneys on Mr. Wormley's houses, on I street, being blown down, and going right through the house?
A. I do not.
Q. Do you recollect of the roof on the house of Mr. , on 6th street, being blown off and carried round on 7th street?
A. I do not recollect of that instance, but I recollect of the
71 roof on Mr. Joe Wilson's house, on 13th street, being blown off.
Q. Do you recollect of two unfinished houses on F street being blown down?
A. No, sir.
Q. Do you recollect of the roof on the house of Mr. Charles F. Green, on the corner of 7th and L streets, being blown off.
A. Yes, sir. I also recollect of a number of trees being blown down.
Q. Do you recollect of this fine tree, on the corner of 7th street and the avenue, being blown down?
A. No, sir.
Q. By Mr. Davidge. I wish to know if it is not a very common thing for metal roofs to be taken off?

A. Yes, sir. Whenever they get loose at the end the wind will get underneath and take them off.

72 During said storm the southeast joist, which projected four feet beyond the said vestibule wall, broke off just beyond the point where it rested on the said vestibule wall or iron column, and in consequence of which the said spire fell eastward, on the top of the church, breaking the rafters and girders of its roof, and throwing its north and south walls outward, and the north wall fell upon the said premises of the plaintiffs, crushing in the back building thereof to its basement, injuring the main building, and destroying the said furniture. That the actual damage which the plaintiffs sustained thereby, in their reversionary estate and interest in said premises and said goods and chattels, was about four thousand dollars.

And thereupon the plaintiffs rested their case, when the defendants, by their counsel, prayed the court to instruct the jury, that, upon the whole testimony aforesaid, the plaintiffs were not entitled to recover; to which said prayer the plaintiffs excepted, but the court overruled their exception, and so instructed the jury as aforesaid prayed by the said defendant. Wherefore the plaintiffs pray the court to sign, seal, and cause to be enrolled this their first bill of exception.

Given under my hand seal.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

74 *Proceedings in general term of the supreme court of D. C.*

Present: D. K. Cartter, ch. justice; Geo. P. Fisher, Andrew Wylie, justices; Ward H. Lamon, marshal; R. J. Meigs, clerk; June 6, 1865.

And now again come here the parties aforesaid, by their attorneys aforesaid, and thereupon, after mature deliberation, it seems to the court that in the record of the proceedings of the court in special term or circuit court, there is no error. Therefore it is considered by the court that the plaintiffs' motion to set aside the verdict aforesaid and to grant a new trial, be, and the same is hereby, refused, and that the plaintiffs take nothing by their suit; that the defendant go thereof without day, and recover against the plaintiffs $36 34 for their costs by them about their defence expended, and that they have

75 execution thereof.

And whereas afterwards, to wit, on the first day of September, 1865, the said plaintiffs, by their attorneys aforesaid, produced and filed in court here the U. S. writ for the correcting of errors upon the judgment aforesaid, directed to the justices of the supreme court of the District of Columbia, and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of the proceedings of the judgment aforesaid and all things thereunto relating, with the writ of error aforesaid, hereto annexed, are hereby transmitted to the Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the said court this 9th day of December, 1865.

R. J. MEIGS, *Clerk.*

Filed December 16, 1865.

Supreme Court of the United States.

DECEMBER TERM, 1867.

MARY BRIEN ET AL., *Plaintiffs in Error* } No.
vs.
WILLIAM Q. FORCE ET AL. }

Plaintiffs' Brief.

The plaintiffs in error and the defendants were, respecttively, the owners in fee of two lots of ground nearly contiguous to each other, situated in Washington city. That belonging to the plaintiffs had been improved by a very fine and substantial brick dwelling house; and the lot of the defendants, subsequently to the improvements of the plaintiffs, was improved by a large church building, on the top of which was erected a wooden spire, of the height of one hundred and twenty feet with a base of twenty feet, and which was so improperly and negligently erected and maintained, as it is claimed by the plaintiffs, that, on the 24th of February, 1862, during a storm, the spire was blown down, and in its fall threw out the north wall of the church building against the house of the plaintiffs, damaging its walls, crushing in its back building to the basement, and destroying the furniture in the same, to the extent of the sum of abont four thousand dollars.

The plaintiffs in error, to recover for these injuries done to their reversionary estate, brought this action of trespass on the case.

It will appear from the record that the plaintiffs declared against the defendants, in their individual names, in three counts; alleging in the first, that they wrongfully and negli-

gently kept and maintained a dangerous spire, which fell on the premises of the plaintiffs to their damage; in the second, that they, as trustees, under a certain deed conveying the property to them, in trust for the First Baptist Church, and under a certain act of Congress, approved 17th June, 1844, wrongfully and negligently kept and maintained a dangerous spire, &c.; and in the third, that they being trustees as aforesaid, it was the duty of the congregation of said church to keep said spire in repair, but said congregation did not, but on the contrary, wrongfully and negligently kept and maintained a dangerous spire, &c.

To prove the allegations of the declarations, the plaintiffs gave evidence of their own title, then read the deed under which defendants claimed title to the church property, conveying the same to them as trustees of the First Baptist Church, and the act of Congress of the 17th of June, 1844, authorizing the trustees of any religious congregation to sue and be sued in their own names, in relation to the title, *possession*, or *enjoyment* of property.

They further gave evidence tending to show that the spire which was the cause of the injuries was originally improperly and dangerously constructed, not having sufficient base for its height, and not in any manner fastened to the walls of the church building; that it was for a long time prior to its fall, considerably out of perpendicular, and to such an extent that any one could, on looking, have discovered it, and that in a gale of wind, by no means extraordinary or infrequent, it fell and occasioned the damage set out in the declaration.

The plaintiffs then rested, whereupon the defendants without introducing any testimony, asked the court to instruct the jury, that upon the whole testimony the plaintiffs were not entitled to recover, which instruction the court gave, the plaintiffs excepted, and the jury in conformity to the ruling of the judge returned a verdict for the defendants.

The only question now for this court is, was there any error in this ruling.

It will be observed from this instruction that the defendants demurred to the evidence, and admitted thereby every

fair and legitimate deduction which might be made from the testimony; and it is submitted, therefore, that under this declaration, if there was any duty to maintain a proper structure upon the church building, either in said defendants as individual members of the worshipping congregation, or as trustees holding the legal title either under the deed of trust, or under the act of Congress, or both; or in the congregation itself impleaded under the names of the trustees in its corporate capacity, the ruling of the court must be reversed.

It will not be contended before this court, as it was not before the court below, that the plaintiffs have failed in any particular to establish the ordinary circumstances that attach liability between individuals. The question there presented, and which will be relied upon here, is, that there was no responsibility upon any one impleaded in this case to respond in damages to the plaintiffs; in other words no matter what the case may be, howsoever improperly the spire was erected and negligently maintained and great the damage to the plaintiffs, yet there is no one, where the offending property belongs to a religious association, such as this, to answer for the damage—a denial of all responsibility. A proposition a little extraordinary that there can be a wrong without a remedy somewhere.

To avoid to some extent the difficulties attending the enforcements of rights, and compensation for wrongs where the parties proceeded against consisted of a voluntary association under no compact of continuity or responsible organization, and to prevent the continual application to the legislature for incorporation, Congress passed the act of 17th June, 1844, which, it will be contended, incorporated all religous associations for purposes of protecting themselves against the injuries of others, and in turn being made responsible for their own acts, and that this religious association is an incorporation under said act and as such liable for its torts. The third count in the declaration proceeds upon this hypothesis:

It will be readily perceived that prior to this act, it was impossible for these organizations, as mere voluntary

associations composed of men, women and children, to succeed in any enterprise of church improvement of any magnitude. It was usual that the property should be conveyed to trustees to hold the legal title for the benefit of the congregation, who were in possession, and committees were appointed to make contracts for building church edifices, and it frequently happened that owing to the irresponsible character of trustees and committee-men, that contractors and material men would decline to assist them in their enterprise, and if they did, upon failure to pay, the committees acting only as agents, and the trustees not being in possession, the parties would be obliged to look to the congregation for payment. A suit against a congregation in the character of a voluntary association, where from the number of parties, the frequent abatements by death, &c., &c., would be simply impracticable. Seeing this necessity, that the only way in which these organizations could efficiently accomplish the objects which brought them into existence was by incorporation, and to escape the harrassment of constant petitions by such associations in a growing city, this act, almost identical in its main features with the acts of New York and other States, was passed.

It was contended by the defendants before the court below, and so decided by it, that this act was not an act of incorporation. We submit that it is.

1st. The objects for which it was passed required incorporation.

To limit its operation only to the extent of a permission that the legal title might be held by trustees, without relieving them and the congregation, of individual responsibility, which is one of the usual effects of incorporation, is to give the act no operation beyond what the parties might have done before at common law. It would be a work of supererogation before this court to attempt to show that incorporation is the best and only way in which these organizations can flourish.

2d. The act by granting all the necessary constituents of incorportion does constitute these societies corporations.

No particular form of words is necessary to create a corporation.

1 Kyd, 62.

Angell & Ames on Corp., §76

It is only essential that it shall have a name, the act of Congress gives them names, viz. by enacting, "that a majority of the acting trustees, for any such congregation, may sue and be sued in their own names," &c.

The property of the congregation is to be held by the trustees *and their successors* by the very terms of the act, which shows there is to be a succession, changing the common law descent of the property between individuals and thereby creating a corporation. A grant made to sundry persons and their successors creates a corporation. Dyer R. 100 a pl 70, 2 Term, Reps. 672.

On this subject, whether these congregations are incorporated by this act, the attention of the court is particularly requested to an elaborately considered case, exceedingly similar to the present; Conservators of River Tone *vs.* Ash. 10 Barnw. & Cress. 348; which decision it is submitted conclusively shows this act to be one of incorporation, so far as the purposes of this suit are concerned, and that it may be sued as such in relation to any matter affecting the possession or enjoyment of its property. It is unimportant in this case to determine under this act whether the congregation or the trustees constitute the corporation, inasmuch as the second count charges the duty of repair and the negligence on the trustees; and the third count, on the congregation. Very similar statutes have been passed in New York and Maryland, the courts of the former hold the congregation is the corporation, Robertson *vs.* Bullions, 11 N. Y. (1 Kern.) 243.; while those of the latter, that the trustees are incorporated. 2 Maryland ch. Decs. 143.

It was contended before the court below, and hence anticipated that it may be insisted here, that whether this act of Congress is one of incorporation or not, yet the trustees having no fund out of which to make repairs or improvements, are not in law to be held responsible for that which the law has

provided no means for accomplishing, and that this doctrine applies equally, whether the trustees are to be regarded in the light of trustees simply holding the legal title, for the purpose set out in the act of Congress, or as trustees incorporated for certain purposes. This view ignores what is really submitted on the part of the plaintiffs as the true construction of this statute, that it is the congregation which is incorporated, and not the trustees who are simply made the legal representatives of the association for the purpose of asserting and defending its rights.

In New York, notwithstanding the statutes declared the trustees of such associations to be the body coporate, yet the courts on looking at the whole act, decided that from its scope and provisions, it was manifest that the congregation was incoporated and not the trustees.

Robertson *vs.* Bullion, 11 N. Y. (1, Kern.) 243.

The same reasoning will apply to this act, and such a construction, while it would give effect to all of its provisions would also confer upon them precisely the organization that is adapted for it. If it is true that the congregation is the corporation, then the same rule of responsibility applies to it as attaches to any private corporation established principally for its own private benefit, and which has or is supposed to have a corporate fund.

The following cases, if authority was needed, assert this doctrine.

Mower *vs.* Leicester, 9 Mass. 247.
Rector *vs.* Buckhart, 2 Hill, N. Y. Rep. 193.
Chestnut *vs.* Rutter, 4 S. & R. 16.
Ward *vs.* Newark Turnpike Co. Spencer R. 323.

But the reasoning of these cases applies equally as well whether the trustees be the coporation or the congregation. It is a private corporation, not public or *quasi*, but one established principally for the benefit of the corporators, and are therefore conclusively presumed to have funds for the repair and proper maintenance of the structures they use, so that in their use the rights of others shall not be infringed upon

This idea of its being necessary that corporations should

have funds to carry out the provisions of their charter, or at all events the means to obtain them, before they can be charged with responsibility, only applies to cases of public corporations having public duties to perform, and is not applicable to the case of private ones.

Riddle *vs.* Prop. of Lock, Merrimac R., 7 Mass., 187.

If courts did not hold these private corporations to strict responsibility for their acts, communities and individuals would soon, in this country which is so prolific of these institutions, be compelled to suffer the greatest wrongs. Instead of seeking to relieve them from responsiblity, the inclination of courts has been to hold them responsible for all torts.

But besides, whether these religious congregations be incorporated with a fund or not, or remain simply voluntary assotions with trustees holding the legal title and under the act of Congress, suable as to the possession and enjoyment of their property, yet being the holders of property, there attaches the common law responsibility to them *qua* owners of property, arising out of and incident to the ownership of property, that they will so use it, so enjoy it, that the rights of others shall not be injured. An idiot, the owner of real estate which has from its decayed state fallen and injured another, may be sued and held responsible in damages for the injury; an obligation not arising from a conscious neglect, but flowing from the very ownership of property, and deriving its origin in the maxim, *sic utere tuo ut alienum non lædas.*

Broom's Legal Maxims, 328.

The act of Congress is, however, decisive upon the plaintiff's right to sue for this injury, irrespective of all questions as to whose negligence the accident was attributable, and whether as individuals or a corporation with or without funds. It declares, and the defendants in accepting the office of trustees are chargeable with its notice and all legitimate consequences, that they may be sued as to the *possession and enjoyment* of the property. The plaintiffs' action is for the *possession* of a dangerous structure and its negligent and careless *enjoyment.* We have no need to look further than this act at this stage of the cause. If, after judgment, the plaintiffs sought